



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
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GAVIN NEWSOM, Governor
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May 19, 2022

Larry Dotson, Senior Engineer
Kaweah Delta Water Conservation District
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**Subject: Paregien Basin Recharge Expansion Project (Project)
Mitigated Negative Declaration (MND)
State Clearinghouse No. 2022040278**

Dear Mr. Dotson:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the Kaweah Delta Water Conservation District (District) for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

Larry Dotson
Kaweah Delta Water Conservation District
May 19, 2022
Page 2

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

Bird Protection: CDFW has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs, and nests include section 3503 (regarding unlawful take, possession, or needless destruction of the nest or eggs of any bird), section 3503.5 (regarding the take, possession, or destruction of any birds-of-prey or their nests or eggs), and section 3513 (regarding unlawful take of any migratory nongame bird).

Water Rights: The capture of unallocated stream flows to artificially recharge groundwater aquifers is subject to appropriation and approval by the State Water Resources Control Board (SWRCB) pursuant to Water Code section 1200 et seq. CDFW, as Trustee Agency, is consulted by SWRCB during the water rights process to provide terms and conditions designed to protect fish and wildlife prior to appropriation of the State's water resources. Certain fish and wildlife are reliant upon aquatic and riparian ecosystems, which in turn are reliant upon adequate flows of water. CDFW therefore has a material interest in assuring that adequate water flows within streams for the protection, maintenance, and proper stewardship of those resources. CDFW provides, as available, biological expertise to review and comment on environmental documents and impacts arising from Project activities.

PROJECT DESCRIPTION SUMMARY

The District intends to recontour the existing Paregien recharge basins to expand its groundwater recharge capacity.

The proposed expansion Project will perform re-contouring of existing natural grades of available retention areas to provide a more uniform basin shape for water control and storage. The re-contoured areas are proposed to provide a uniform depth of three feet across all the areas and thereby increase the overall retention capacity by approximately 80 percent and provide sufficient hydraulic pressures to facilitate optimum percolation rates. Deep ripping and discing will occur to ensure that the recharge basins do not retain a sealed floor and to achieve a maximum recharge rate. The Project should expand the water retention area to approximately 36 acres and

Larry Dotson
Kaweah Delta Water Conservation District
May 19, 2022
Page 3

provide a maximum capacity of 108 acre-feet, up from the current capacity of 60 acre-feet. The expansion is anticipated to generate 1,440 acre-feet per year of recharge.

Proponent: Kaweah Delta Water Storage District

Location: The Project is located in Tulare County in the San Joaquin Valley, in close proximity of the northeasterly limits of the City of Farmersville. The proposed Project site is just south of State Route (SR) 198, east of Road 168, on Tulare County Assessor's Parcel Numbers 111-230-010, 111-230-015, and 111-190-027. The Project property is bisected by Deep Creek, which is a natural channel distributary from the Kaweah River that runs through the City of Farmersville.

Timeframe: None given.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the District in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife, i.e., biological resources. Editorial comments or other suggestions may also be included to improve the document.

Based on a review of the Project description, a review of California Natural Diversity Database (CNDDDB) records, and a review of aerial imagery of the Project and surrounding habitat, several special-status species could potentially be impacted by Project activities including but not limited to the State threatened and federal endangered San Joaquin kit fox (*Vulpes macrotis mutica*); the State threatened Swainson's hawk (*Buteo swainsoni*); the State species of special concern burrowing owl (*Athene cunicularia*), American badger (*Taxidea taxus*), pallid bat (*Antrozous pallidus*), western mastiff bat (*Eumops perotis californicus*), western red bat (*Lasiurus blossevillii*), and Northern California legless lizard (*Anniella pulchra*); the California Rare Plant Rank 1B.1 alkali-sink goldfields (*Lasthenia chrysantha*); and the California Rare Plant Rank 1B.2 spiny-sepaled button-celery (*Eryngium spinosepalum*). Other species of birds, amphibians, reptiles, mammals, fish, invertebrates, and plants also compose the local ecosystem.

The Project site is adjacent to the Kaweah Oaks Preserve, which is owned and managed by the Sequoia Riverlands Trust and Four Creeks Land Trust for the benefit and preservation of native habitat including Valley sacaton grassland and Great Valley valley oak riparian forest. Surface and groundwater dependent ecosystems, including riparian, wetland, and oak woodland habitats are present along Deep Creek and other areas within the Project boundary.

Larry Dotson
Kaweah Delta Water Conservation District
May 19, 2022
Page 4

Please note that the CNDDDB is populated by and records voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDDB but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record in the CNDDDB does not mean a species is not present. In order to adequately assess any potential Project-related impacts to biological resources, surveys conducted by a qualified wildlife biologist/botanist during the appropriate survey period(s) and using the appropriate protocol survey methodology are warranted in order to determine whether or not any special status species are present at or near the Project area.

CDFW recommends that the following modifications and/or edits be incorporated into the MND, including proposed avoidance, minimization, and compensatory measures, prior to its adoption by the District

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or United States Fish and Wildlife Service (USFWS)?

COMMENT 1: San Joaquin Kit Fox (SJKF)

Issues and Impacts: SJKF occurrences have been documented within the vicinity of the Project boundary (CDFW 2022). The MND acknowledges the potential for the Project to temporarily disturb and permanently alter suitable habitat for special status species including SJKF, and to directly impact individuals if present during construction activities.

SJKF den in rights-of-way, agricultural and fallow/ruderal habitat, dry stream channels, and canal levees, etc., and populations can fluctuate over time. SJKF are also capable of occupying urban environments (Cypher and Frost 1999). SJKF may be attracted to Project areas due to the type and level of ground-disturbing activities and the loose, friable soils resulting from intensive ground disturbance. SJKF will forage in fallow and agricultural fields and utilize streams and canals as dispersal corridors. Absence in any one year is not necessarily a reliable predictor of future SJKF potential to occur on a site. Habitat loss resulting from land conversion to agricultural, urban, and industrial development is the primary threat to SJKF, and the Project area is in the vicinity of areas of medium suitability for SJKF habitat (Cypher et al. 2013). As a result, there is potential for SJKF to occupy all suitable habitat within the Project boundary and surrounding area. Without appropriate avoidance and minimization measures for SJKF, potential significant impacts associated with construction include habitat loss, den collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of young, and direct mortality of individuals.

Larry Dotson
Kaweah Delta Water Conservation District
May 19, 2022
Page 5

Recommended Mitigation Measure 1: SJKF Surveys and Minimization

CDFW recommends assessing presence or absence of SJKF by having qualified biologists conduct surveys of Project areas and a 500-foot buffer of Project areas to detect SJKF and their sign. CDFW recommends that presence/absence of SJKF be assessed by conducting surveys. Specifically, CDFW advises conducting surveys in all areas of potentially suitable habitat no less than 14 days and no more than 30 days prior to beginning of ground-disturbing activities. If suitable dens are found, den avoidance buffers CDFW recommends that avoidance be implemented by following the USFWS (2011) “Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance”.

Recommended Mitigation Measure 2: SJKF Take Authorization

SJKF activity or detection of individuals warrants consultation with CDFW to discuss how to avoid take or, if avoidance is not feasible, to acquire an Incidental Take Permit (ITP) prior to any ground-disturbing activities, pursuant to Fish and Game Code section 2081, subdivision (b).

COMMENT 2: Swainson’s Hawk (SWHA)

Issues and Impacts: SWHA occurrences have been documented within the Project vicinity (CDFW 2022) and suitable nesting and foraging habitat occur within the Project site. The MND acknowledges the potential for the Project to impact nesting SWHA, and Mitigation Measure BIO-1 states that a biologist would determine appropriate setback distances in consultation with CDFW. Without appropriate avoidance and minimization measures for SWHA, potential significant impacts that may result from Project activities include nest abandonment, loss of nest trees, loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young), and direct mortality. Any take of SWHA without appropriate incidental take authorization would be a violation of Fish and Game Code.

SWHA exhibit high nest-site fidelity year after year and lack of suitable nesting habitat in the San Joaquin Valley limits their local distribution and abundance (CDFW 2016). Approval of the Project may lead to subsequent ground-disturbing activities that involve noise, groundwork, and movement of workers that could affect nests and has the potential to result in nest abandonment and loss of foraging habitat, significantly impacting local nesting SWHA.

Recommended Mitigation Measure 3: SWHA Surveys

CDFW recommends that a qualified biologist conduct surveys for nesting SWHA following the survey methods developed by the Swainson’s Hawk Technical Advisory Committee (SWHA TAC 2000) prior to Project implementation. Mitigation Measure BIO-1 states that surveys will be conducted according to SWHA TAC 2000 guidelines within a ½-mile survey distance from the construction area for SWHA. The SWHA TAC survey protocol includes early season surveys to assist the Project

Larry Dotson
Kaweah Delta Water Conservation District
May 19, 2022
Page 6

proponent in implementing necessary avoidance and minimization measures, and in identifying active nest sites prior to initiating ground-disturbing activities.

Recommended Mitigation Measure 4: SWHA No-Disturbance Buffer

If ground-disturbing activities are to take place during the nesting season of March 1 through August 31, CDFW recommends that additional pre-activity surveys for active nests be conducted by a qualified biologist no more than 10 days prior to the start of Project implementation. CDFW recommends that a minimum no-disturbance buffer of ½-mile be delineated around active nests until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival.

Recommended Mitigation Measure 5: SWHA Take Authorization

CDFW recommends that in the event an active SWHA nest is detected during surveys, consultation with CDFW is warranted to discuss how to implement the Project and avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP pursuant to Fish and Game Code section 2081, subdivision (b) is necessary to comply with CESA.

COMMENT 3: Burrowing Owl (BUOW)

Issues and Impacts: BUOW inhabit open grassland containing small mammal burrows, a requisite habitat feature used by BUOW year-round for nesting and cover. BUOW may also occur in some agricultural areas, ruderal grassy fields, vacant lots, and pastures if the vegetation structure is suitable and there are useable burrows and foraging habitat in the area (Gervais et al. 2008). Habitat both in the Project site and the Project vicinity supports suitable habitat for BUOW (CDFW 2022). Potentially significant impacts to nesting and non-nesting BUOW can occur as a result of ground-impacting activity, such as grading and flooding within active and fallow agricultural areas, and as a result of noise, vibration, and other disturbance caused by equipment and crews. Potential impacts associated with Project activities and land conversion include habitat loss, burrow collapse, inadvertent entrapment, nest abandonment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals. In addition, and as described in the “Staff Report on Burrowing Owl Mitigation” (CDFG 2012), excluding and/or evicting BUOW from their burrows is considered a potentially significant impact under CEQA.

Recommended Mitigation Measure 6: BUOW Habitat Assessment

CDFW recommends that a qualified biologist conduct a habitat assessment in advance of implementation of Project activities, to determine if the Project area or its vicinity contains suitable habitat for BUOW.

Larry Dotson
 Kaweah Delta Water Conservation District
 May 19, 2022
 Page 7

Recommended Mitigation Measure 7: BUOW Surveys

Where suitable habitat is present on or in the vicinity of the Project area, CDFW recommends assessing presence or absence of BUOW by having a qualified biologist conduct surveys following the California Burrowing Owl Consortium (1993) "Burrowing Owl Survey Protocol and Mitigation Guidelines" and the CDFG (2012) "Staff Report on Burrowing Owl Mitigation". Specifically, these documents suggest three or more surveillance surveys conducted during daylight, with each visit occurring at least three weeks apart during the peak breeding season of April 15 to July 15, when BUOW are most detectable. In addition, CDFW advises that surveys include a minimum 500-foot survey radius around the Project area.

Recommended Mitigation Measure 8: BUOW Avoidance

CDFW recommends that no-disturbance buffers, as outlined by CDFG (2012), be implemented prior to and during any ground-disturbing activities, and specifically that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

* meters (m)

Recommended Mitigation Measure 9: BUOW Eviction and Mitigation

If BUOW are found within these recommended buffers and avoidance by a reduced buffer using biological monitors or other minimization is not possible, CDFW recommends that any burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW then recommends mitigation in the form of replacement of occupied burrows with artificial burrows at a minimum ratio of one burrow collapsed to one artificial burrow constructed (1:1) to mitigate for evicting BUOW and the loss of burrows. BUOW may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance at a rate that is sufficient to detect BUOW if they return.

Larry Dotson
Kaweah Delta Water Conservation District
May 19, 2022
Page 8

COMMENT 4: Special-Status Bat Species

Issues and Impacts: Habitat features are present that have the potential to support pallid bat, western mastiff bat, and western red bat. Western mastiff bat and pallid bat are known to roost in buildings, caves, tunnels, cliffs, crevices, and trees. (Lewis 1994 and Gruver 2006). Western red bat is highly associated with riparian habitat (Peirson et al. 2006). Project activities have the potential to affect habitat upon which special-status bat species depend for successful breeding and have the potential to impact individuals and local populations. Without appropriate avoidance and minimization measures for special-status bat species, potential significant impacts resulting from ground- and vegetation-disturbing activities associated with Project activities include habitat loss, inadvertent entrapment, roost abandonment, reduced reproductive success, reduction in health and vigor of young, and direct mortality of individuals.

Recommended Mitigation Measure 10: Bat Roost Habitat Assessment

CDFW recommends that a qualified biologist conduct a habitat assessment well in advance of Project implementation to determine if the Project area or its immediate vicinity contains suitable roosting habitat for special-status bat species.

Recommended Mitigation Measure 11: Bat Surveys

If suitable habitat is present, CDFW recommends assessing presence/absence of special-status bat roosts by conducting surveys during the appropriate seasonal period of bat activity. CDFW recommends methods such as through evening emergence surveys or bat detectors to determine whether bats are present.

Recommended Mitigation Measure 12: Bat Roost Disturbance Minimization and Avoidance

If bats are present, CDFW recommends that a 100-foot no-disturbance buffer be placed around the roost and that a qualified biologist who is experienced with bats monitor the roost for signs of disturbance to bats from Project activity. If a bat roost is identified and work is planned to occur during the breeding season, CDFW recommends that no disturbance to maternity roosts occurs and that CDFW be consulted to determine measures to prevent breeding disruption or failure.

COMMENT 5: Other State Species of Special Concern

Issues and Impacts: American badger and Northern California legless lizard are known to inhabit grassland and upland shrub areas with friable soils (Williams 1986, Thomson et al. 2016). These species have been documented to occur in the vicinity of the Project, which supports requisite habitat elements for these species (CDFW 2022). The MND acknowledges suitable habitat for these species occurs within the Project site. Habitat loss threatens these species (Williams 1986, Thomson et al.

Larry Dotson
Kaweah Delta Water Conservation District
May 19, 2022
Page 9

2016), and habitat within and adjacent to the Project represents some of the only remaining undeveloped land in the vicinity, which is otherwise intensively managed for agriculture. Without appropriate avoidance and minimization measures for these species, potentially significant impacts associated with ground disturbance include habitat loss, nest/den/burrow abandonment, which may result in reduced health or vigor of eggs and/or young, and direct mortality.

Recommended Mitigation Measure 13: Surveys

CDFW recommends that a qualified biologist conduct focused surveys for the species and their requisite habitat features to evaluate potential impacts resulting from ground and vegetation disturbance.

Recommended Mitigation Measure 14: Avoidance

Avoidance whenever possible is encouraged via delineation and observance of a 50-foot no-disturbance buffer around dens of mammals like the American badger as well as the entrances of burrows that can provide refuge for small mammals, reptiles, and amphibians.

COMMENT 6: Special-Status Plants

Issues and Impacts: Special-status plant species meeting the definition of rare or endangered under CEQA section 15380 are known to occur in the vicinity the Project and surrounding area. Alkali sink goldfields and spiny-sepaled button-celery have been documented within the Project vicinity (CDFW 2022).

Without appropriate avoidance and minimization measures for special-status plants, potential significant impacts associated with subsequent construction include loss of habitat, loss or reduction of productivity, and direct mortality.

Alkali-sink goldfields, spiny-sepaled button-celery, and many other special-status plant species are threatened by grazing and agricultural, urban, and energy development. Many historical occurrences of these species are presumed extirpated (CNPS 2019). Though new populations have recently been discovered, impacts to existing populations have the potential to significantly impact populations of plant species.

Recommended Mitigation Measure 15: Special-Status Plant Surveys

CDFW recommends that individual Project sites be surveyed for special-status plants by a qualified botanist following the “Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities” (CDFG 2018). This protocol, which is intended to maximize detectability, includes the identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period.

Larry Dotson
Kaweah Delta Water Conservation District
May 19, 2022
Page 10

Recommended Mitigation Measure 16: Special-Status Plant Avoidance

CDFW recommends that special-status plant species be avoided whenever possible by delineating and observing a no-disturbance buffer of at least 50 feet from the outer edge of the plant population(s) or specific habitat type(s) required by special-status plant species. If buffers cannot be maintained, then consultation with CDFW may be warranted to determine appropriate minimization and mitigation measures for impacts to special-status plant species.

Recommended Mitigation Measure 17: Listed Plant Species Take Authorization

If a State-listed plant species is identified during botanical surveys, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization is warranted. Take authorization would occur through issuance of an ITP, pursuant to Fish and Game Code section 2081, subdivision (b).

COMMENT 7: Wetland and Riparian Habitats

Issues and Impacts: The MND Environmental Checklist Section IV, Biological Resources Section c., page 39, concludes that there is no riparian habitat or other sensitive natural community located on the Project site. This conclusion conflicts with the results of the Biological Resource Evaluation in Appendix C of the MND documenting mature valley oak trees in Deep Creek within the Project boundary. CDFW is concerned that Project activities may have the potential to result in temporary and permanent impacts to aquatic and riparian habitat and associated species through habitat conversion, grading, fill, deep ripping, groundwater pumping, and reducing the amount of surface flow in active stream channels and downstream, as well as reducing the amount of subsurface flow from percolation.

Recommended Mitigation Measure 18: Stream and Wetland Mapping

CDFW recommends that formal stream mapping and wetland delineation be conducted by a qualified biologist or hydrologist, as warranted, to determine the baseline location, extent, and condition of streams (including any floodplain) and wetlands within and adjacent to the Project area. Please note that while there is overlap, State and Federal definitions of wetlands differ, and complete stream mapping commonly differs from delineations used by the United States (U.S.) Army Corps of Engineers specifically to identify the extent of Waters of the U.S. Therefore, it is advised that the wetland delineation identify both State and Federal wetlands in the Project area, and that stream mapping include the full lateral extent of all streams including floodplains, if present, within the Project area. CDFW advises that site map(s) depicting the extent of any activities that may affect wetlands, lakes, or streams be included with any Project site evaluations, to clearly identify areas where stream/riparian and wetland habitats could be impacted from Project activities.

Larry Dotson
Kaweah Delta Water Conservation District
May 19, 2022
Page 11

Recommended Mitigation Measure 19: Stream and Wetland Habitat Mitigation

CDFW recommends that the potential direct and indirect impacts to stream/riparian and wetland habitat be analyzed according to each Project activity. Based on those potential impacts, CDFW recommends that the MND include measures to avoid, minimize, and/or mitigate those impacts. CDFW recommends that impacts to riparian habitat (i.e., biotic and abiotic features) take into account the effects to stream function and hydrology from riparian habitat loss or damage, as well as potential effects from the loss of riparian habitat to special-status species already identified herein. CDFW recommends that losses to stream and wetland habitats be offset with corresponding riparian and wetland habitat restoration incorporating native vegetation to replace the value to fish and wildlife provided by the habitats lost from Project implementation. If on-site restoration to replace habitats is not feasible, CDFW recommends offsite mitigation by restoring or enhancing in-kind riparian or wetland habitat and providing for the long-term management and protection of the mitigation area, to ensure its persistence.

Editorial Comments and/or Suggestions

Stream Hydrology: The MND is not clear in describing whether the Project will result in reduced surface flow in streams for the purpose of groundwater recharge and storage. CDFW is concerned that the proposed Project may result in direct and cumulative adverse impacts to the fish and wildlife and other public trust resources supported by Deep Creek and associated riparian habitats, and that any proposed reduction in surface flow will affect the sustainability of the riparian woodland and aquatic habitats within these streams. CDFW recommends that the MND be amended and recirculated with a hydrologic study or other information that identifies and analyzes the impacts of surface and subsurface water reduction on the riparian woodland and aquatic habitats associated with these streams and the species supported by these habitats, and includes appropriate measures to avoid, minimize, and mitigate potential biological impacts due to surface flow reduction.

Water Rights: The MND does not specify whether the Project diverts unallocated surface flow for the purpose of groundwater storage. As stated previously, the capture of unallocated stream flows to artificially recharge groundwater aquifers is subject to appropriation and approval by the SWRCB pursuant to Water Code section 1200 et seq. CDFW recommends that the MND include a detailed description of the water rights and water entitlements that would pertain to the Project and address any applications or change petitions that the District will be filing. CDFW, as Trustee Agency, is consulted by the SWRCB during the water rights process to provide terms and conditions designed to protect fish and wildlife prior to appropriation of the State's water resources. Given the potential for impacts to sensitive species and their habitats, it is advised that required consultation with CDFW occur well in advance of the SWRCB water right application process.

Larry Dotson
Kaweah Delta Water Conservation District
May 19, 2022
Page 12

Lake and Streambed Alteration: Project activities that have the potential to substantially change the bed, bank, and channel of streams and associated riparian and wetland habitat that are subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial. CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration (LSA) Agreement; therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts, a subsequent CEQA analysis may be necessary for LSA Agreement issuance. Additional information on notification requirements is available through the Central Region LSA Program at (559) 243-4593 or R4LSA@wildlife.ca.gov and the CDFW website: <https://wildlife.ca.gov/Conservation/LSA>.

Nesting birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

CDFW encourages that Project implementation occur during the bird non-nesting season; however, if Project activities must occur during the breeding season (i.e., February through mid-September), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Code sections as referenced above.

To evaluate Project-related impacts to nesting birds, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground disturbance to maximize the probability that nests that could potentially be impacted by the Project are detected. CDFW also recommends that surveys cover a sufficient area around the work site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends that a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends that the work causing that change cease and that CDFW be consulted for additional avoidance and minimization measures.

Larry Dotson
Kaweah Delta Water Conservation District
May 19, 2022
Page 13

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers.

Endangered Species Act Consultation: CDFW recommends consultation with the USFWS prior to Project ground disturbance, due to potential impacts to Federal listed species. Take under the ESA is more stringently defined than under CESA; take under ESA may also include significant habitat modification or degradation that could result in death or injury to a listed species, by interfering with essential behavioral patterns such as breeding, foraging, or nesting.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database that may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be obtained at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data> . The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist the District in identifying and mitigating Project impacts on biological resources. If you have questions

Larry Dotson
Kaweah Delta Water Conservation District
May 19, 2022
Page 14

regarding this letter, please contact Annette Tenneboe, Senior Environmental Scientist (Specialist), at (559) 580-3202 or by email at Annette.Tenneboe@wildlife.ca.gov.

Sincerely,

DocuSigned by:

96D42C58E092466...

Valerie Cook
Acting Regional Manager

Attachment

ec: Office of Planning and Research
State Clearinghouse

Annette Tenneboe
California Department of Fish and Wildlife

Larry Dotson
Kaweah Delta Water Conservation District
May 19, 2022
Page 15

REFERENCES

- California Burrowing Owl Consortium. 1993. Burrowing Owl Survey Protocol and Mitigation Guidelines.
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Larry Dotson
Kaweah Delta Water Conservation District
May 19, 2022
Page 16

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Attachment 1

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
(MMRP)**

**PROJECT: Paregien Basin Recharge Expansion Project
SCH No.: 2022040278**

RECOMMENDED MITIGATION MEASURES	STATUS/DATE/INITIALS
<i>Before Project Activity</i>	
Recommended Mitigation Measure 1: SJKF Surveys and Minimization	
Recommended Mitigation Measure 2: SJKF Take Authorization	
Recommended Mitigation Measure 3: SWHA Surveys	
Recommended Mitigation Measure 4: SWHA No-disturbance Buffer	
Recommended Mitigation Measure 5: SWHA Take Authorization	
Recommended Mitigation Measure 6: BUOW Habitat Assessment	
Recommended Mitigation Measure 7: BUOW Surveys	
Recommended Mitigation Measure 8: BUOW Avoidance	
Recommended Mitigation Measure 9: BUOW Eviction and Mitigation	
Recommended Mitigation Measure 10: Bat Roost Habitat Assessment	
Recommended Mitigation Measure 11: Bat Surveys	
Recommended Mitigation Measure 12: Bat Roost Disturbance Minimization and Avoidance	
Recommended Mitigation Measure 13: American Badger and Northern California Legless Lizard Surveys	
Recommended Mitigation Measure 14: American Badger and Northern California Legless Lizard Avoidance	
Recommended Mitigation Measure 15: Special-Status Plant Surveys	

RECOMMENDED MITIGATION MEASURES	STATUS/DATE/INITIALS
Recommended Mitigation Measure 16: Special-Status Plant Avoidance	
Recommended Mitigation Measure 17: Listed Plant Species Take Authorization	
Recommended Mitigation Measure 18: Stream and Wetland Mapping	
Recommended Mitigation Measure 19: Stream and Wetland Mitigation	
<i>During Project Activity</i>	
Recommended Mitigation Measure 1 SJKF Surveys and Minimization	
Recommended Mitigation Measure 5: SWHA No-disturbance Buffers	
Recommended Mitigation Measure 8: BUOW Avoidance	
Recommended Mitigation Measure 12: Bat Roost Disturbance Minimization and Avoidance	
Recommended Mitigation Measure 16: Special-Status Plant Avoidance	